

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

WELCH ALLYN, INC.,

Plaintiff,

v.

5:14-cv-1122
(TJM/DEP)

OBP CORPORATION and
OBP MEDICAL, INC.,

Defendants.

Thomas J. McAvoy, D.J.

DECISION and ORDER

The Court referred this patent infringement action to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York. Plaintiff alleges that Defendants infringed its United States Patent No. 8,435,175, entitled "Vaginal Speculum Apparatus." Presently at issue is how the claims in that patent should be construed.

The Report-Recommendation, dated March 31, 2016, addressed the parties claim-construction arguments. Magistrate Judge Peebles recommended that the Court adopt the claim-construction language that was undisputed by the parties and further recommended specific language for those claims the parties disputed.

Both sides filed objections to the Report and Recommendation. When objections

to a magistrate judge’s Report-Recommendation are lodged, the Court makes a “*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” See 28 U.S.C. § 636(b)(1). After such a review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.” Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff’s objections, this Court has determined to accept and adopt the recommendations of Magistrate Judge Peebles for the reasons stated in the Report-Recommendation.

Accordingly:

Plaintiff’s objections to the Amended Report-Recommendation, dkt. # 98, are hereby **OVERRULED**. Defendants’ objections to the Amended Report-Recommendation, dkt. # 97, are hereby **OVERRULED**, and the Amended Report-Recommendation, dkt. # 90, is hereby adopted. Accordingly, the following constructions of the claim terms are hereby adopted:

1. Agreed-Upon Terms:

<u>Term/Phrase</u>	<u>Agreed Construction</u>
integral curved light pipe	a component of the portable illumination assembly that transmits light
receives	the handle portion itself (not some other component) holds or contains a portion of the portable illumination assembly
set of rails	a pair of substantially straight structures (for example, a track) on the handle portion of the portable illumination assembly

housing	an enclosure that retains the portable power supply
within a common housing	an enclosure that retains within it the components of the portable illumination assembly

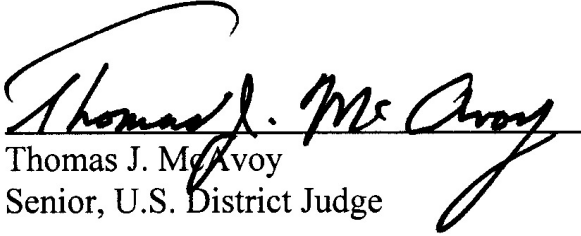
2. Claims in dispute

<u>Term</u>	<u>Construction</u>
portable illumination assembly	a self-contained illumination assembly that can be easily moved from place-to-place
switch	a lever, plug, or other device for making or breaking contact, or altering the connections of a circuit
mechanism for energizing	a slider switch with a conductive strip; a rotary switch with conductive strip; an optical switch; a magnetic/reed switch; an ON/OFF throw switch that can be enabled with the speculum when engaged therewith to automatically or manually energize and de-energize the LED; and equivalents of the foregoing switches
said speculum is disposable	the speculum is designed to be discarded after a single use or a single patient use
the entire apparatus is disposable	the entire apparatus is designed to be discarded after a single use or a single patient use
said illumination assembly is accessed . . . through said opening	the portable illumination assembly can be energized and/or removed through the opening
can be accessed . . . only through said defined opening	the portable illumination assembly is designed to be energized only by accessing the energization mechanism through the opening formed by the yoke and lever portion
releasably attached	capable of being easily detached

lower Blade	no construction necessary
handle Portion	no construction necessary
proximal End	no construction necessary

IT IS SO ORDERED

Dated: June 16, 2016


Thomas J. McAvoy
Senior, U.S. District Judge